THE UTAH
PROSECUTOR

The Newsletter of the Utah Prosecution Council

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TENTH CIRCUIT

Officer's Training and Experience Relevant in Reasonable Suspicion Determination. Patrolling a less traveled road near the Mexico-New Mexico border, an officer observed a sport-utility vehicle with tinted windows driving ten miles per hour over the speed limit during lunchtime. Based on his past experience, the officer knew that each of these observations was potentially indicative of illegal trafficking. Smugglers often prefer the large carrying capacity of SUVs, the extra privacy of tinted windows, and the travel time reduction achieved by speeding through border patrol locations. Additionally, they often try to take advantage of officer shift changes and lunch breaks around the border. Suspicious, the officer pulled behind the SUV, which had slowed down considerably since seeing the officer. With the patrol vehicle following, the SUV continued to slow down, eventually pulling onto the shoulder. Fearing that the occupants might try to jump from the moving vehicle and scatter in different directions, the officer activated his patrol lights to bring the vehicle to a stop. In the subsequent encounter, drugs were found in the SUV.

Appealing a denied motion to suppress, defendant argued that the officer lacked the reasonable suspicion required to make a legal stop. Rejecting this argument, the U.S. Court of Appeals for the Tenth Circuit agreed with the trial

See **BRIEFS** *on page 2*

BRIEFS *continued from page 1*
court that although in isolation each of the officer's observations may have been insufficient to warrant the stop, the cumulative effect of the factors, particularly given the officer's six years of experience, was to create a reasonable suspicion of criminal activity. *U.S. v. Quintana-Garcia*, No. 02-2127 (September 9, 2003).

Guidelines for Completed Crimes Inapplicable to Attempt Crimes Absent Express Language. Defendant pleaded guilty to an accessory after the fact of attempted bank robbery. In sentencing, the district court reduced the base offense level by six levels in accordance with the federal sentencing guideline for accessory after the fact, but refused to apply the three-level reduction mandated by the attempt guideline where the substantive offense is not completed. Rather, observing that the same statute defined both a completed bank robbery and an attempted bank robbery, the court reasoned that it could refer to the guideline for completed robbery in arriving at an appropriate sentence for attempted robbery. On appeal, the Tenth Circuit U.S. Court of Appeals rejected this approach, which has been followed by other circuits, and held that the general attempt guideline, entitled "Attempt, Solicitation, or Conspiracy (Not Covered by a Specific Offense Guideline)," governs sentencing for all attempted crimes not expressly covered by a specific guideline. The fact that an attempt crime and a completed crime are both included in the same statute is still relevant, said the Court, in determining "the extent to which [the general attempt guideline] can be applied." Where, as here, a defendant satisfies all of the elements of the substantive statutory offense (robbery), and is only thwarted from achieving his purpose by a circumstance beyond his control, the three-level reduction of the general attempt guideline is not available. *U.S. v. Martinez*, No. 02-1230 (September 8, 2003).

Issue Raised Improperly Under Former Law Does Not Bar Federal Habeas Review. Following petitioner's conviction of aggravated sexual battery, his counsel filed a timely but unsuccessful motion for a new trial. Upon hearing the trial court's denial, petitioner gave a number of reasons that he did not feel adequately represented at trial, but the trial court disregarded them. Appealing his conviction, petitioner did not raise the issue of ineffective counsel, and his other arguments were rejected. In a subsequent petition for post-conviction relief, he argued that his trial counsel had been ineffective, but the state court held the claim procedurally barred on the ground that the issue had "clearly [been] raised . . . before the trial court" but not on direct appeal. Petitioner's subsequent habeas petition in federal district court was likewise rejected, the court holding that its review was barred by the state procedural default rule. Reversing, the Tenth Circuit U.S. Court of Appeals observed that because petitioner had first argued ineffective assistance of counsel before the trial court after the expiration of the period during which he could have moved for a new trial, state precedent at the time would have precluded both the trial court and the appellate court from considering the issue. Thus, said the Court, when the state court had refused the post-conviction relief petition on the ground that the issue had been raised at the trial court but not on direct appeal, it was announcing a new rule. Because the state "did not have a firmly established and regularly followed rule in which ineffective assistance of counsel claims raised before the trial court after the expiration of the statutory period for new trial motions were required to be raised on direct appeal," the Court held review of his habeas petition by the federal district court not barred. *Anderson v. A. G. of Kansas*, No. 02-3122 (September 3, 2003).

Analogy to Clarify "Reasonable Doubt" Standard Requires New Trial. Defendant was charged with murder for the killing of his ex-girlfriend's new romantic interest. During voir dire, and in response to a prospective juror's request for clarification of the meaning of "reasonable doubt," the trial judge explained that state law forbade defining the term, that he "in no way intend[ed] to express or imply a definition," but that he had heard it described as "the kind of serious doubt that causes you to act or not act in matters that are serious, like calling off a wedding at the last minute." Different people will be motivated by differing degrees of doubt, the judge continued, because "reasonable doubt is a subjective matter that has to be resolved by each person." Claiming that this explanation had misled the jury on the issue, defense counsel moved for a mistrial, but the motion was denied and defendant was convicted of manslaughter. On appeal, the Oklahoma Court of Criminal Appeals affirmed the conviction, finding that "[t]he trial court expressly told the jury he was *not* defining reasonable doubt." Reversing, the Tenth Circuit U.S. Court of Appeals held that although the judge had claimed not to be defining the term, he had at least "misleadingly suggested that [jury members] had a degree of leeway broader than the Constitution permits." "The Oklahoma courts discourage providing a definition of reasonable doubt not because the term has a broad range

See **BRIEFS** *on page 5*

On the Lighter Side

Excerpts from the *Texas Bar Journal*, April 2003, Vol. 66, No. 4, and the never-never land of forwarded emails.

DID HE REALLY SAY THAT?

From **Jack Hazlewood** of Amarillo (Texas), this excerpt from the transcription of a recorded interview with his client by an insurance attorney prior to the commencement of any litigation.

Q. Did you lose anything during the fall?

A. *My balance.*

COURT TV

This excerpt from the transcript of a rape trial in Tarrant County comes from **Donald K. Buckman** of Fort Worth.

CROSS-EXAMINATION BY MR. FYFE:

Q. Ms. Goodman, my name is Bruce Fyfe. And I tried to talk to you today, correct?

A. Uh-huh.

Q. I came up and I introduced myself as a district attorney—

A. Yeah.

Q. –or assistant? And I asked if you would talk to me about this case. Do—

A. Right.

Q. –you remember that?

A. Right.

Q. You indicated you would not do that—

A. Right.

Q. –correct? Okay. Now, is it the lawyers from McDonalds who told you not to talk to us or the lawyer for the Defense who told you not to talk to us?

A. Nobody. I know that I can decline.

Q. Okay. *How are you aware of the fact that you can decline?*

A. *Because I watch Court TV.*

Q. Okay. Very good.

A SHOW OF HANDS

From **Gene Thompson** of Pampa, this marvelous courtroom story from the Feb. 4, 2003, issue of the *Amarillo Globe News*.

Defendants in Trial Lend Helping Hands

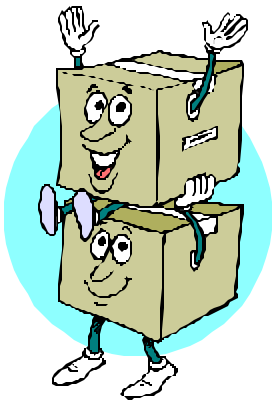
PERRYTON—A pair of helpful defendants lent District Attorney Bruce Roberson an unexpected hand, or actually a show of hands, last month during their trial for aggravated assault and robbery at district court in Perryton.

The female victim was tearfully testifying that she had been beaten and robbed by two men. The district attorney listened intently.

"And are the two perpetrators of this terrible crime present in the courtroom today?" Roberson asked.

Both defendants immediately raised their hands.

"*Here, your honor.*" (The defendants were convicted!)



WHAT'S THE RUSH?

Farmer John lived on a quiet, rural highway. As time went by, however, traffic slowly built up until at last it was so heavy and so fast that his chickens were being run over at a rate of three to six a day.

Frustrated, Farmer John finally called the sheriff's office and complained. In response, the sheriff had some county workers go out and erect a sign:

SLOW: SCHOOL CROSSING

Three days later, Farmer John called the sheriff again. "You've got to do something about these drivers. The 'school crossing' sign seems to make them go even faster."

The next day, the sheriff sent out the crew to put up a new sign:

SLOW: CHILDREN AT PLAY

That really sped them up. Farmer John called and called and called every day for three weeks. Finally, he told the sheriff, "Your signs aren't helping. Can I make my own?"

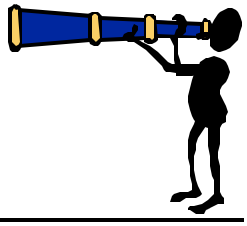
"Sure," replied the sheriff, "put up your own sign."

The sheriff got no more calls from Farmer John. Three weeks later, curiosity got the best of him and he gave Farmer John a call. "How's the problem with those drivers? Did you put up your sign?"

"Oh, I sure did. And not one chicken has been killed since then. I'm very busy, so I've got to go now, but thanks for your concern." He hung up the phone.

The sheriff was really curious now, thinking that perhaps Farmer John had a plan that could be used to slow down drivers in other problem spots. Driving out to Farmer John's house, he saw a simple, spray-painted sheet of wood:

NUDIST COLONY: GO SLOW AND WATCH OUT FOR THE CHICKS!



CRIMINAL PROTECTIVE ORDERS

By Kristine Knowlton
Assistant Attorney General

The Cohabitant Abuse Procedures Act provides tools for prosecutors to protect victims throughout the criminal justice process. These tools can generally be referred to as "criminal protective orders." The language of the statute will never receive an award for clarity and/or excellence in legislative draftsmanship, but it works, and every prosecutor should be aware of its provisions.

JAIL NO CONTACT AGREEMENTS/ORDERS: The most common of the criminal protective orders is the "Jail No Contact Agreement/ Order" issued at the jail when a person has been arrested for committing a domestic violence offense. Under Section 77-36-2.5, a person cannot be released from jail unless s/he agrees in writing or is ordered by the court to have no personal contact with the alleged victim, not threaten or harass the alleged victim, and not to go to the alleged victim's residence or any premises temporarily occupied by the alleged victim. The alleged victim can waive these protections, but the waiver must be in writing. Jail No Contact Agreements/Orders are entered on to the statewide domestic violence network by the jail or by the court if it is a court order. (See Section 77-36-2.5 (4)). This agreement/order protects the alleged victim until the end of the next day on which the courts are in session. Since an arrested person is to appear in court the next judicial day after the arrest (see Section 77-36-2.6(1)), this gives the prosecutor the opportunity to request a Pre-trial Criminal Protective Order (see the next paragraph) to continue to protect the victim throughout the pendency of the proceedings. Violation of a Jail No Contact Agreement/ Order is a third-degree felony if the person was originally arrested for a felony or a Class A misdemeanor if the person was originally arrested for a misdemeanor.

PRETRIAL CRIMINAL PROTECTIVE ORDERS: The authority for a "Pretrial Criminal Protective Order" is given under Sections 77-36-2.6(3) and 77-36-2.7(3). The court can: order the defendant to not threaten or commit acts of domestic violence or abuse against the alleged victim and any designated household members; prohibit the defendant from harassing, telephoning, contacting or otherwise communicating, directly or indirectly, with the alleged victim; remove and/or exclude the defendant from the alleged victim's residence and premises of the residence; order the defendant to stay away from a residence, school, victim's employment, or any other specifically designated place; and order any other relief the court considers necessary to protect and provide for the safety of the alleged victim and any other designated household members. *This is a specific written order of the court, a certified copy of which is given to the victim by the court. Prosecutors should have prepared orders for the court to complete and sign at the defendant's initial appearance. Sample forms are available in the DV 101 book or by going to Prosecution Council's website: www.upc.state.ut.us and clicking on the link to "Forms." (A new, updated edition of the DV 101 book is now available. To get yours, send me an e-mail at kknowlton@utah.gov.) Since the statutes do not require the forms to be uniform throughout the state, the Administrative Office of the Courts (AOC) has agreed to enter these orders onto the statewide domestic violence network if the prosecutor mails, faxes or e-mails the orders to them. The contact person at the AOC is: Taanya Ramirez, Administrative Office of the Courts, P.O. Box 140241, Salt Lake City, UT 84114-0241. Taanya's fax number is (801) 578-3843 and her email address is taanyar@email.utcourts.gov. This arrangement then also requires that the prosecutor notify the AOC when the order terminates so that it can be removed from the statewide system. Violation of a Pretrial Criminal Protective Order is a third-degree felony if the person is charged with a felony and a Class A misdemeanor if s/he is charged with a misdemeanor.

CRIMINAL SENTENCING PROTECTIVE ORDER: If a defendant is convicted of an offense involving domestic violence, the prosecutor can request a "Criminal Sentencing Protective Order" to continue the court's protection of the victim. *This order must also be in writing, separate from a condition of probation, so that it can be entered onto the statewide domestic violence network and a copy given to the victim by the prosecutor (see section 77-36-5). Since there is no specific penalty for violating a Sentencing Protective Order, it is therefore punishable under Section 76-1-108 as a Class A misdemeanor. The defendant will likely be put on probation, so not only is a violation of this sentencing order a separate criminal offense, it would also be a violation of the defendant's probation (standard probation condition: not violate any local, state, or federal law). This order should also be mailed, faxed, or

See **ORDERS** *on page 5*

ORDERS *continued from page 4*
emailed to Taanya at the AOC for entry onto the statewide network. Be sure to notify the AOC when the sentencing order terminates or is dismissed by the court.

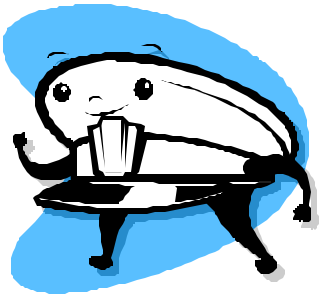
*NOTE: The statute says that the pre-trial order can be extended through the sentencing, but it seems simpler and less confusing if the prosecutor just prepares and provides a separate order for the court at sentencing with a specific designation on the order so there will be no confusion as to what kind of order it is. Also, the pre-trial order and the sentencing order must be served on the defendant.

BRIEFS *continued from page 2*
of meanings," said the Court, "but because the term is self-explanatory." Finding that the wedding analogy likely misled the jury about the range of discretion it had in defining the evidentiary standard necessary for conviction, the Court remanded for a new trial. *Wansing v. Hargett*, No. 01-7163 (August 29, 2003).

Consent to Search Vehicle Extends to Secured Vehicle Storage Compartments. Searching an RV for drugs or weapons, after obtaining defendant-driver's consent to do so, an officer noticed that the RV did not appear to be lived in. In apparent contrast to defendant's representation that he and a passenger were on a two-month vacation in the RV, there were no clothes, toiletries, or food items to be seen. His suspicions aroused, when the officer observed a bench seat that he believed to function as a storage compartment, he determined to look inside. Beneath the seat's cushion lay a piece of plywood that had been nailed over the compartment. Prying out the nails and removing the piece of wood, the officer discovered yet another piece of wood that had been secured over the compartment with screws. Removing the screws and the other piece of wood, the officer discovered a large cache of drugs. At trial, defendant unsuccessfully argued that the officer exceeded the scope of the consent when he removed the secured pieces of wood to access the storage compartment. On appeal, the Tenth Circuit U.S. Court of Appeals affirmed the lower court's denial, explaining that where, as here, general consent to search for drugs is given, and where, as here, no limitation or objection is made to the scope of the search, it is reasonable for an officer to believe that the scope of the consent reaches any containers in the vehicle that could contain the drugs, where such may be searched without doing more than de minimis damage. *U.S. v Marquez*, No. 02-3317 (July 31, 2003).

UTAH SUPREME COURT

Officer's Subjective Belief and Inherent Danger of Traffic Stops Are Factors in Totality of Circumstances Analysis. On a deserted downtown street at about 5 a.m., an officer observed a man leaning into defendant's parked car and talking with defendant. Based on the time and location, the officer suspected drug activity or prostitution, but did not make a stop until after the man had walked away and defendant had committed two traffic violations. Handing over an expired license, defendant said that his current license had been stolen, but a subsequent license check revealed that his license was in fact invalid. Having decided to impound the car, but not to arrest defendant, the officer requested that defendant exit the vehicle, and asked if he was armed. Defendant responded that he was not, but the officer proceeded to conduct a *Terry* frisk "as a matter of routine," and discovered drugs. Appealing a denied motion to suppress, defendant argued that the warrantless frisk was illegal because the officer lacked a reasonable belief that he was armed. The Utah Court of Appeals agreed and reversed, focusing on the officer's repeated assertions at trial that he had no reason to believe defendant was armed. On the State's appeal, the Utah Supreme Court agreed that the *Terry* frisk was unwarranted here, but held that an officer's subjective belief is not alone dispositive of the constitutionality of a frisk. Moreover, said the Court, the danger to officers that inheres in any traffic stop, and the mitigation of that danger where a person has exited the vehicle, are factors to be considered. *State v. Warren*, 2003 UT 36.



Voluntariness of Defendant's Absence at Sentencing May Not Be Automatically Presumed. Defendant pled guilty to misdemeanor drug offenses. In a presentence report, Adult Probation and Parole recommended that he be sentenced to twenty days in jail and required to participate in a substance abuse treatment program. At the sentencing hearing, defendant failed to appear. Denying defense counsel's request that he be given time to locate defendant, the trial court presumed that the absence was voluntary and sentenced defendant in absentia to the statutory maximum on each charge. Reversing, the Utah Court of Appeals noted that the prosecution bears the burden of showing that defendant has voluntarily waived his right to be present, and found that this burden was not carried where the trial court failed to conduct an inquiry into the reasons for defendant's absence.

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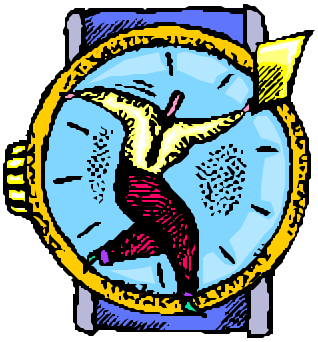
On the State's appeal, the Utah Supreme Court affirmed, explaining that "the question of voluntariness is highly fact-dependent, is tied to the totality of the circumstances in particular cases, and, where there is virtually no explanation for an absence, requires some form of inquiry by the trial court." "Alternatively," the Court suggested, "at least in sentencing hearings, a trial court might apply a conditional presumption without a voluntariness inquiry, but indicate on the record that the sentence will be automatically set aside and a new hearing conducted if the defendant appears and rebuts the presumption." Additionally, the Court affirmed the appellate court's reading of Utah Rule of Criminal Procedure 22(a) as requiring "trial courts . . . to provide both [defendant and his counsel] to address the court and present information relevant to sentencing before imposing sentence." *State v. Wanosik*, 2003 UT 34.



Attempted Murder Conviction Requires Intentional Mental State. Utah's murder statute permits a murder conviction where a person "intentionally or knowingly causes the death of another." Utah's attempt statute permits an attempted murder conviction where a person, "acting with the kind of culpability otherwise required for the commission of the offense," takes a "substantial step toward commission of the offense." "[C]onduct does not constitute a substantial step unless it is strongly corroborative of the actor's intent to commit the offense." Intoxicated and contentious, defendant threatened to kill his girlfriend. While driving, he pointed a gun at her head and pulled the trigger, but the gun misfired. Next aiming the gun toward her feet, he fired a round into the floor of the vehicle. Defendant's girlfriend then jumped from the vehicle, and defendant fired again. Convicted of attempted murder, defendant argued that the jury instructions, which set forth the mens rea required for attempted murder as "knowing or intentional," misstated the law. In agreement, the Utah Supreme Court found that the attempt statute requires a greater degree of culpability (intent) than does the murder statute (intent or knowledge). Finding that the trial court had thus erred in instructing the jury that "knowing or intentional" conduct was sufficient for an attempted murder conviction, the Court nevertheless found that the error was not plain, and affirmed the conviction. *State v. Casey*, 2003 UT 33.

Entire Statement Need Not Be Admitted to Satisfy Doctrine of Oral Completeness. In a conversation with an intimate acquaintance, defendant confessed to having killed his girlfriend earlier that day. Upon further inquiry, defendant explained that the killing was motivated by his girlfriend holding him at gunpoint and not allowing him to leave her apartment to visit his son. The trial court admitted defendant's confession, but excluded his explanation as "self-serving" and "uncorroborated," and "made after [he] had the opportunity for reflective thought." Appealing the exclusion, defendant argued that exculpatory portions of the conversation should have been admitted under the common law doctrine of completeness, which operates to ensure that statements are not taken in isolation and out of context. Rejecting this argument, the Utah Supreme Court observed that conversations frequently cover various topics, and concluded that "the whole of the utterance need not be the whole of a conversation." Although admission of exculpatory statements might be necessary to comply with URE 611's requirement that "a trial court . . . make the presentation of evidence 'effective for the ascertainment of the truth,'" the Court found that the trial judge was within his discretion to exclude the exculpatory statements here after finding that they lacked indications of trustworthiness. *State v. Cruz-Meza*, 2003 UT 32.

UTAH COURT OF APPEALS

Forgery and Identity Fraud Statute Do Not Prohibit Identical Conduct. Under *State v. Shondel*, 453 P.2d 146 (1969), where two statutes make the same conduct criminal, a defendant is entitled to be charged with the lesser of the two. Defendant was convicted of forgery after using stolen checks to pay for automobile repairs. Appealing the trial court's refusal to amend the forgery charge to the lesser crime of identity fraud, defendant argued that the two statutes proscribed identical conduct. Rejecting this argument, the Utah Court of Appeals compared the plain language of the statutes to conclude that 1) forgery requires a writing, but identity fraud does not, 2) forgery may be committed using information from an existent or nonexistent person, but identity fraud requires a real person, and 3) identity fraud requires proof of the value of the thing wrongfully obtained, but forgery does not. Having determined that the two statutes differed in these respects, the Court agreed with the trial court that the *Shondel* doctrine was inapplicable

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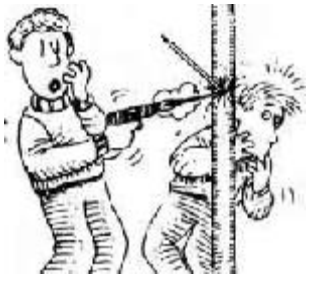
Join Julia Roberts[1] for the 2003-04 LEOJ course!

November 24, 25, 26, 2003 Camp Williams POST range

There is ***only one course*** that will qualify judges, Board of Pardons members, and prosecutors for the Law Enforcement Official/Judge Concealed Weapon Permit, and this is it. You must pre-register, by phone or email (preferred) to Jayme Garn, jgarn@utah.gov or 801-965-4711. ***No fee to attend***, but you must supply your own firearm, ammunition and safety equipment. For questions or further details, contact Ken Wallentine, kenwallentine@utah.gov or 801-957-8531. Class size is limited.

Requalification shoot days for those already holding a permit:

St. George, November 7
Salt Lake City, November 10
Preregister with Ken Wallentine, kenwallentine@utah.gov



[1] Celebrity appearance pending. You didn't really believe it anyway, did you?

BRIEFS *continued from page 8*
here, and affirmed defendant's conviction. *State v. Valdez*, 2003 UT App 314.

Officer's Search of Coat and Shoes Exceeded Scope of Permissible Frisk. Acting on an anonymous tip that the occupants of a certain residence were using methamphetamine in the presence of children, officers went to the residence and obtained consent to enter and perform a search. Just after entering the bedroom of one of the children, an officer was surprised to see defendant, who was a visitor at the home, exit the closet. After frisking him for weapons, and not finding any, the officer sent defendant outside with another officer. Observing a coat

on the floor of the closet, and learning that it belonged to defendant, the officer picked it up to take it to defendant. While doing so, he felt the pockets for weapons, and located a syringe. Another officer picked up defendant's shoes, which had been close to the closet, and found more syringes inside one of them. Appealing subsequent drug convictions, defendant argued that the search of his coat and shoes went beyond the permissible scope of a *Terry* frisk. In agreement, the Utah Court of Appeals reversed, explaining that because "safety and weapons concerns were no longer present after [defendant] had been frisked and removed from the premises," the search of his belongings was unjustified. *State v. Peterson*, 2003 UT App 300.

OTHER STATES

Installing GPS Tracking Device on Vehicle Requires Warrant. Suspecting defendant of involvement in his daughter's disappearance, police obtained warrants to install GPS tracking devices in defendant's vehicles. Defendant was informed that he was a suspect in the case, and that police expected to recover his daughter's body, which they believed had been hastily buried. Data from the GPS devices showed that over the next couple of weeks, defendant traveled to two remote locations. Visiting these places, police found the daughter's body and

other evidence of the crime. Subsequently convicted of first-degree murder, defendant challenged the probable cause basis for the issuance of the warrants. Finding that GPS devices merely disclose information defendant has already exposed to the public (i.e., where he has driven), the Washington Court of Appeals declined to reach the merits of defendant's challenge, but held that the state constitution did not even require a warrant for the installation of such devices. On appeal, the Washington Supreme Court observed that the appellate court's holding, if left to stand, would permit police to attach GPS devices to any vehicle, "whether criminal activity is suspected or not." Noting that "an enormous amount of personal information" is revealed by the places a person visits, the Court quoted with approval the Oregon Supreme Court's pronouncement in a similar case that "a privacy interest is 'an interest in freedom from particular forms of scrutiny,'" found the installation of GPS devices to fall among such forms, and held that a warrant is thus required. *State v. Jackson*, No. 72799-6 (September 11, 2003).

GOT METH? Need Help?

The Methamphetamine Prosecution Unit of the Utah Attorney General's Office hears you!

The Attorney General's "Meth" Unit was established in 1998. It is funded by a federal grant through the High Intensity Drug Trafficking Area (HIDTA) program. In the past five years it has successfully prosecuted numerous methamphetamine manufacturers, distributors, and precursor chemical distributors in both state and federal courts. The program serves as a resource for prosecutors and law enforcement throughout the state in our cooperative effort to curb the flow of methamphetamine into our communities. The Meth Unit is staffed by prosecutors Colleen Coebergh and Vernon Stejskal, who are available for assistance in cases involving the manufacture or distribution of methamphetamine. If you would like information, advice, or prosecution assistance on a methamphetamine-related case, call either Colleen or Vernon at (801) 524-3082.

They're from the state and they're here to help!

Prosecutor Profile

Thomas L. Low

Wasatch County Attorney

"Do I have to have a favorite?" asks Thomas L. Low, in a tone so beseeching that the sympathies of even this austere inquisitor are almost stirred. The new Wasatch County Attorney has been responding to a series of (apparently) interminable "what's-your-favorite _____" questions, and—though amicable to the last—is growing weary of deliberating over preferences he doesn't possess. He simply likes too many types of music, participates in too many sports, and has read too many books to ever settle on one winner from the bunch.

Not being inclined to choose favorites from among his varied interests, however, doesn't mean Thomas is always interested in everything. He hardly batted an eye when, at age 21, he decided to abandon his engineering major (in favor of English Literature, of all things), though both his father (himself a lawyer, and well acquainted with the perils of the profession) and mother had bred him to pursue hard science. His parents were fairly sympathetic toward his decision to change majors, and perhaps even a little proud to discover that their boy had a soul, but when he later revealed his desire to become a lawyer, his mother hastily force-fed him an *LA Times* article describing the unusually high incidence of job dissatisfaction among attorneys.

Undaunted, Thomas entered BYU Law School, where he found more than just a degree: his future wife started classes there just a year after he did. Upon her graduation, the two of them, along with some others, began their own private practice. The work was good, but Thomas longed to spend more time in court, "to own the court, to be there every day." When, after six years of private practice, he learned of an opening for a deputy county attorney in Heber, he saw it as his chance to realize this goal, and he seized it.

Now four years later, Thomas hasn't been disappointed. Though he spends more time directing police investigations than he had initially anticipated, and though his mid-trial "Matlock moments" are perhaps not as frequent as he would like (but how could they be?), he absolutely loves his work and the people he works with. Asked what he has in mind for the future, he contentedly replies, "I just plan on getting better at what I do." Maybe finding a favorite isn't so tough after all.

QUICK FACTS

Undergraduate:	**BYU, English Literature**
Law School:	**BYU (1993)**
Favorite Team:	**Cougars (by default)**
Favorite Food:	**Anything at *The Snake Creek Grill* (in Heber)**
Last Book Read:	***To Kill a Mockingbird***
Favorite Book:	***Angela's Ashes* (if he must choose a favorite)**
Favorite Movie:	***It's a Wonderful Life* (see above qualifier)**
Words of Wisdom:	**"For that which ye do send out shall return unto you again" (Alma 41:15).**

Utah May Soon Have Use of Powerful, New Criminal Investigation Database Program

Florida Officials Say 'Matrix' Database Nearly Ready for Expansion to Other States

As Reported in the Criminal Law Reporter, Volume 73 Number 20, Page 528 (August 20, 2003).

TAMPA, Fla.—A pilot project in Florida that uses a high-speed database to enable investigators to access and integrate public records and police information on suspected terrorists and other criminals is nearly ready to expand to a dozen other states, a senior Florida law enforcement agent told BNA Aug. 7.

Phil Ramer, special agent in charge with the Florida Department of Law Enforcement, told BNA that representatives of the participating states first must iron out final privacy and other policy issues concerning the interstate sharing of the sensitive intelligence available on the Multi-State Anti-Terrorism Information Exchange, known as "Matrix."

The $12 million pilot project, primarily funded by grants from the departments of Justice and Homeland Security, already has proven successful in Florida, Ramer said. "It can give us vital information. It can go from having no leads on a case to being able to give investigators specific leads on specific people," Ramer said.

For example, the system in a few key strokes can match information on all owners of a specific type of vehicle against all lists of known sex or other offenders. In the past, such information was available but only by contacting separate state agencies and collating the data, he said.

Public, Proprietary, Governmental Data

Under the program, information submitted by a state only can be disseminated according to that state's laws and regulations, Ramer said. Alabama, Connecticut, Florida, Georgia, Kentucky, Louisiana, Michigan, New York, Oregon, Pennsylvania, South Carolina, Ohio, and **UTAH** [emphasis added] are currently participating in the program. The project is being coordinated by the Institute for Intergovernmental Research in Tallahassee.

"We're at the point now where we want to bring other states on and see how it works on a multi-state level," Ramer said. Once it is shown the data are useful in investigations, the program likely will grow to other states and eventually may be used by local, state, and federal law enforcement agencies nationwide, he said.

Matrix was developed by Seisint Inc., a Boca Raton-based company that markets high-speed information to commercial and law enforcement clients.

A spokeswoman for Seisint told BNA that the company would not discuss the project. However, in an executive summary of the project, Seisint said that Matrix relies on meshing a "data supercomputer" with a huge repository of information from public, proprietary, and government data.

"In essence, Matrix is engineered to integrate disparate data sets from multiple sources, to process billions of records and to manipulate data at speeds recently thought impossible," the summary said.

Ramer said the project was conceived in the wake of the terrorist attacks of Sept. 11, 2001, but has been expanded to include general criminal investigations.

Among other things, Matrix can provide information to specific inquiries such as height, weight, race, sex, vehicle description, and geographic data that can be analyzed to provide photo line-ups, target maps, and social networking charts, the summary indicated.

The system can provide mapping data that can allow "visualization of associations and links within the current investigation or between investigations initially thought unrelated," the summary said. "One click on a target address and an investigator can get a list of everyone that has ever lived at that address and their corresponding biographical information."

Privacy Safeguards, Concerns

Ramer said that the system contains privacy safeguards, including policies for use and sharing of the information. Investigators who stray from the approved protocols are subject to termination and criminal prosecution, he noted.

"It doesn't allow us to get to any data we don't have a right to get to. We just want to do it faster," Ramer told BNA. "This is simply getting data that law enforcement has a right to and putting it in one system. This is not about trying to get outside the bounds of the law."

But a privacy advocate said the system presented a host of concerns, noting the recent votes by Congress to block or restrict funding of the Defense Department's controversial Terrorism Information Awareness (TIA) Program. Among other things, TIA would have processed individuals' financial transactions, travel, medical records, and other activities in a quest to detect patterns of terrorist activities.

"If it is kept vague and used for multiple purposes—including data mining and pattern analysis the way TIA was created—and with limited oversight, I think there would be major concerns," Ari Schwartz, associate director of the Washington-based Center for Democracy and Technology, told BNA. "It would be difficult for the program to go forward in the current climate."

Utah Prosecutor Handbook

The Utah Prosecutor Handbook, Kent Morgan's excellent research tool on all aspects of Utah criminal law, is available in both printed and CD versions. The 875-page printed version will cost your office a mere $40.00 each. The CD version is yours for the asking. Each CD contains the full book in both WordPerfect™ and Microsoft Word™ versions. To get your copy of this important resource, contact UPC at:

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2003-04 TRAINING SCHEDULE

UTAH PROSECUTION COUNCIL AND OTHER UTAH CLE CONFERENCES

November 12-14	COUNTY ATTORNEYS' EXECUTIVE MEETING AND UAC CONF. *The only opportunity in the year for County/District Attorneys to gather as a group to discuss issues common to them. Held in conjunction with UAC's Annual Meeting.*	Dixie Center St. George, UT
Late Winter (Tentative, depending on available budget)	ANATOMY OF A COMPUTER CRIME CASE *In-depth examination of a computer crime case from before the first search warrant, all the way through to the verdict. For prosecutors and investigators.*	Location TBD
April 8-9	UPC'S ANNUAL SPRING CONFERENCE *2004 legislative summary, case law update, ethics, and more.* *(801) 468-2655, or Christopher Morley, Asst. Atty. Gen. (801) 366-0282.*	Univ Park Marriott Salt Lake City, UT

NATIONAL ADVOCACY CENTER (NAC)

A description of and application form for NAC courses can be accessed at: http://www.ndaa_apri.org/education/index.html or by contacting Prosecution Council at (801) 366-0202; e-mail: mnash@utah.gov.
Courses at the NAC are free of cost. Travel, lodging, and meal expenses are paid or reimbursed by NAC, and no tuition is charged.

January 5-9 March 15-19 March 29-Apr. 2	TRIAL ADVOCACY I *A practical, "hands-on" training course for trial prosecutors.* ***The registration deadline for all three courses is October 24, 2003.***	Columbia, SC
January 12-16	CYBERSLEUTH I *Learn to prosecute computer and internet-related cases.* ***The registration deadline is October 24, 2003.***	Columbia, SC
January 20-23	PROSECUTING THE DRUGGED DRIVER *Learn about drugs, how they impair driving and how to prove it.* ***The registration deadline is November 21, 2003.***	Columbia, SC
January 26-30	TRIAL ADVOCACY II *Practical instruction for experienced trial prosecutors.* ***The registration deadline is November 21, 2003.***	Columbia, SC
February 2-6	PRETRIAL PREPARATION *Gain a mastery of effective pretrial advocacy and preparation.* ***The registration deadline is November 21, 2003.***	Columbia, SC
February 17-20	CROSS-EXAMINATION *A complete review of cross-examination theory and practice* ***The registration deadline is December 19, 2003.***	Columbia, SC
February 23-27	SEXUAL ASSAULT TRIAL ADVOCACY: MEETING COMMON DEFENSES *Practical instruction for sexual abuse prosecutors* ***The registration deadline is December 19, 2003.***	Columbia, SC
March 1-5	TRIAL ADVOCACY III—PERSUASION *For prosecutors with considerable experience. Will focus on the dynamics of persuasion in the trial arena.* ***The registration deadline is December 19, 2003.***	Columbia, SC
March 8-12	JURY SELECTION *A comprehensive examination of how to select a jury* ***The registration deadline is December 19, 2003.***	Columbia, SC

For More Information Regarding Upcoming Training, Call Utah Prosecution Council: (801) 366-0202

NATIONAL COLLEGE OF DISTRICT ATTORNEYS (NCDA)*
AMERICAN PROSECUTORS RESEARCH INSTITUTE (APRI)**
AND OTHER NATIONAL CLE CONFERENCES

~~March 9-13~~ ~~June 8-12~~ ~~July 20-25~~ October 26-30	PROTECTING CHILDREN ONLINE—FOR PROSECUTORS *This excellent program is put on by the National Center for Missing and Exploited Children, with co-sponsorship by the Office of Juvenile Justice and Delinquency Prevention (OJJDP).* ***The course is very nearly free of cost to attendees. The sponsors cover the cost of airfare, lodging, and of breakfast and lunch on the days of training. Attendance is limited and sessions fill up quickly, so don't delay.*** *For a copy of the agenda and a registration form, call UPC at (801) 366-0202, or e-mail:* mnash@utah.gov	Alexandria, VA
October 26-30	SUCCESSFUL TRIAL STRATEGIES—NCDA*	New Orleans, LA
November 9-13	PROSECUTING VIOLENT CRIME—NCDA*	Orlando, FL
November 16-20	GOVERNMENT CIVIL PRACTICE—NCDA*	Los Angeles, CA
November 16-20	EVIDENCE FOR PROSECUTORS—NCDA*	San Francisco, CA
November 17-21	FINDING WORDS: Interviewing Children and Preparing for Court *Preference given to multi-disciplinary teams of prosecutors/investigators/etc.*	APRI** Winona, MN
November 18-20	PROSECUTING ENVIRONMENTAL CRIMES *Sponsored by the Western States Project.* ***Scholarships are available from the Project to help defray the costs of attending this course.*** *For more information contact the Utah WSP representatives: Craig Anderson, Dep. Salt Lake Dist. Atty. (801) 468-2655, or Christopher Morley, Asst. Atty. Gen. (801) 366-0282.*	Oklahoma City, OK
November 20-22	DNA: JUSTICE SPEAKS—APRI** *Jurisdictions are encouraged to register as a team consisting of prosecutors lab analysts and law enforcement officers. Additional team members may include sexual assault nurse examiners, victim advocates, corrections and judiciary.*	Marriott Crystal City Arlington, VA
December 7-11	FORENSIC EVIDENCE—NCDA*	San Diego, CA
December 7-11 **NEW COURSE**	MEETING CHALLENGES IN PROSECUTION & VICTIM ADVOCACY—NCDA* *A conference for prosecutors, law enforcement and victim advocates.*	San Antonio, TX

***** For copies of course description and regis tration brochures for NCDA courses, call Prosecution Council at (801) 366-0202 or e-mail: mnash@utah.gov, or go to the college's web site: http://www.law.sc.edu/ncda/courses.htm.

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